

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5502 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

ELSIE A. SETON (Claimant)
S.S.A. No.

PRECEDENT
BENEFIT DECISION
No. P-B-203

FORMERLY BENEFIT DECISION No. 5502
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The above-named claimant on July 4, 1949, appealed the decision of a Referee (SF-10043) which held her ineligible for benefits under Section 57(c) of the Unemployment Insurance Act (now section 1253(c) of the Unemployment Insurance Code). Pursuant to an order of this Board remanding the case to a Referee for that purpose, a hearing was held on September 1, 1949, at which was received evidence on behalf of the claimant additional to that taken at the initial hearing before the Referee.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant registered for work and filed a claim for benefits in a San Francisco office of the Department of Employment on March 5, 1949, and thereafter received benefits for several weeks. On May 5, 1949, the Department issued a determination holding her ineligible for benefits under Section 57(c) of the Act for an indefinite period commencing April 19, 1949, on the ground that she was not available for work. This determination was based upon findings that the claimant had made an inadequate search for work during the lengthy period of unemployment

preceding the determination, and had withdrawn from the union under whose jurisdiction she had previously worked. The claimant appealed the determination to a Referee who thereafter issued the decision from which this appeal was taken.

The claimant has been working mostly as a waitress for about twenty years. For the past several years she has been employed as a tray or banquet waitress in numerous San Francisco hotels and eating places. For some time prior to October, 1948, she had not had steady employment but had been working fairly regularly on extra, relief, and other like special assignments. The bulk of such work is obtained through the union of which she was then a member. The record shows that ninety per cent of the work for waitresses in San Francisco, is under the jurisdiction of that union. In November, 1948, the claimant withdrew from the said union. She did not reinstate herself therein until June 8, 1949. She has had little work since October, 1948, and so far as the record discloses had only two days of work between the date she filed the instant claim and June 8, 1949.

At the time the claimant withdrew from the union she had it in mind to enter some new field of employment. She had planned to enter into her new activity in another city, but when her plans did not materialize returned to San Francisco, sometime prior to March 5, 1949, where she has remained ever since. The evidence discloses that the claimant, since opening her claim for benefits, has made reasonable but unsuccessful efforts to obtain work in her regular occupation. She did not, however, seek reinstatement in the union until the date aforesaid.

The union refers only active paid up members to work and only such members may utilize its placement facilities, though a non-member who finds her own job may be admitted or reinstated into membership upon accepting work within the union's jurisdiction. The union dues are two dollars monthly, and the fee paid by a withdrawn member upon reinstatement is \$11.25. The claimant has obtained several work assignments through the union since her reinstatement.

REASON FOR DECISION

The issue in this case is whether or not the claimant's withdrawal from her union so materially reduces her prospects of employment as to render her unavailable for work. This issue has been before us in several prior cases, though not in the precise aspect presented by this case. We have denied benefits to a claimant seeking work as a welder who for personal reasons was unwilling to join the union in whose jurisdiction most of the welding work in his labor market was included (Benefit Decision 5255-1132). We said in that case:

"(The claimant) further reduced his employment prospects by his personal preference not to become a member of a labor organization, since the record shows that a substantial portion of his employment field required union membership. . . ."

Benefit Decision 4686-8760 is to the same effect:

"The claimant (who had been suspended by her union for refusing to pay a fine) wanted maid work but she was precluded from obtaining such a position in the hotels in her locality since employment in these establishments requires union membership. While there were hospitals and motels in the area which were not unionized, there were few openings in the latter establishments. . . . It is our opinion that the claimant's field of possible employment was so narrowed that she could not be considered available for work"

In Benefit Decision 4890-9670, the claimant had decided to give up seafaring work in favor of work as a plumber, an occupation in which he had had previous experience. He had formerly been a member of the plumber's union, but his application for reinstatement therein was not accepted until after he had applied for benefits. This Board held:

"(The claimant) was registered for work with the Department in a classification in which he had had considerable experience and

for which a labor market existed in the area. However, that labor market is largely subject to the jurisdiction of a union in which the claimant did not secure reinstatement until July 25, 1947. From that date, there was no substantial obstruction in the way of the claimant's seeking work and we held that he was available within the meaning of Section 57(c) of the Act on and after July 25, 1947. However, prior to that date, virtually all employment opportunities in his chosen field were cut off from him because he was not yet eligible to secure employment under union conditions. . . ."

In the case before us the claimant's lack of union membership prior to June 8, 1949, cut off ninety per cent of the employment opportunities existing in the labor market to which she was attached. So long as she was not an active member of the union she had no access to most of the job openings in that field of employment in which by reason of experience and training she was most likely to find work. Pursuant to the established principles heretofore set forth, we therefore conclude that the claimant was not available for work until June 8, 1949, on which date she became available for work by returning to active membership in her union.

DECISION

The decision of the Referee is modified. The claimant is held ineligible for benefits as unavailable for work from April 19, 1949, to June 8, 1949, but available for work and eligible for benefits thereafter. Benefits are allowed in accordance herewith if the claimant is otherwise eligible.

Sacramento, California, December 22, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5502 is hereby designated as Precedent Decision No. P-B-203.

Sacramento, California, January 29, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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